

Salim Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-17-1992

Reported in : 1992(3)WLC94; 1992WLN(UC)350

Judge : N.L. Tibrewal, J.

Appeal No. : S.B. Crim. Misc. Petition No. 830 of 1992

Appellant : Salim

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

N.L. Tibrewal, J.

1. This petition is against the order dated 4.3.91 of learned Sessions Judge, Jhunjhunu in Sessions Case No. 56/90.

2. The necessary facts for filing this petition may be given:

The petitioner and six other co-accused were committed to the court of Sessions Judge, Jhunjhunu for the offence under Section 307 IPC. As informed by the learned Counsel for the petitioner, the learned Sessions Judge has still to frame the charges after hearing the arguments and thereafter, the trial in the case shall

commence. The petitioner was an unemployed youngman, and was in search of some job for his livelihood. In the Gulf countries, a large number of youngmen from the State of Rajasthan have gone, where they are provided employment. The District of Jhunjhunu is semi-desert having negligible opportunities of getting employment. In the country, specially in undeveloped districts unemployment is becoming an alarming problem. Thousands of young unemployed persons are in search of jobs and are getting frustration for want of jobs.

3. It appears that the petitioner made efforts to get, a job in the Sultanat of Oman (Gulf Country) as a helper and mason. On 7.2.91, he moved an application in the Sessions Court to exempt his personal attendance from appearance in the case as he had got a job for two years in the Sultanat of Oman. He had also mentioned in the application that air tickets were purchased by him and he also got visa for the same. The application could not be decided by the court in time and the petitioner went to the aforesaid country. The application was decided by the court on 4.3.91 and the same was rejected.

4. While rejecting the application, the learned Judge also initiated proceedings under Section 446 Cr.P.C. and ordered to issue a non-bailable warrant for securing the attendance of the petitioner.

5. The learned Counsel has referred an order of this Court dated 24.1.85, in S.B. Cr. Misc. Petition No. 43/85 wherein, in similar circumstances, this Court allowed the petition under Section 482, Cr.P.C. and granted exemption to the accused. It is not disputed before me that if the trial court decides to frame charge/charges against the petitioner, the same can be read over to his counsel and the plea can also be recorded. The identity of the petitioner in the case is not in dispute. Justice Mr. V.S. Dave, while deciding the above Cr. Misc. Petition observed as under:

In the light of the cases cited above I quash the order of the learned Judge, dated Oct. 15, 1984. I may however, make it clear that whenever the Court finds it essential that the presence of the accused was absolutely necessary sufficient opportunity should be given to the learned Counsel for the petitioner to seek the presence of his client in the Court.

6. As stated earlier, trial of the case has yet to begin and it will take some time. It is true that the petitioner left India without seeking prior permission or order from the trial court, but, it was due to urgency. The petitioner had already purchased the air-ticket and had spent huge amount and in case he had not gone, he would have suffered a great loss and the chances of his not getting the job in future were there. The petitioner, being an unemployed youngman, was in dire necessity to get a job to earn his livelihood. In my view, on the technical ground that the petitioner did not seek prior permission of the court, the application for exemption from personal attendance should not have been rejected by the court. In such cases, the court should take sympathetic and humanitarian approach keeping in view the employment conditions prevailing in the county, specially in an under-developed district like Jhunjhunu.

7. Consequently, I allow this petition. The order of the learned Sessions Judge dated 4.3.91 is hereby quashed. The application filed by the petitioner for his exemption from personal attendance is allowed. He may appear in the trial court through his counsel. It is however, made clear that whenever the court finds that the presence of the petitioner is absolutely necessary, it shall so direct to his counsel, giving sufficient time to the petitioner to appear in the court.

The petition is allowed as indicated above.